

SUBCHAPTER B : MANDATORY ENFORCEMENT HEARINGS

§70.51. Mandatory Enforcement Hearings.

(a) The executive director shall monitor compliance with all permits and licenses issued by the commission. If the evidence available to the executive director through the monitoring process indicates that a permittee or licensee is in substantial noncompliance for a period of four consecutive months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance. A certificate of convenience and necessity is not considered to be a permit or license for the purpose of this section.

(1) The executive director may consider the magnitude and frequency of noncompliances with permit or license limitations and conditions in determining the existence of substantial noncompliance.

(2) Substantial noncompliance includes situations involving permit or license violations which cause or have the potential to cause a significant water quality problem in, or impairment of the uses of, a receiving stream, groundwater, or other water in the state, infringes upon the water rights of diverters or appropriators of water of the state, or results in a release or threat of release of hazardous waste to the environment, or any other set of circumstances which present a threat to public health or safety or the environment. This set of circumstances includes, but is not limited to, a failure to monitor operations or report information required by a permit or license regarding the operation of a facility without which the operator and/or the commission may be unable to adequately assess the performance of the facility and thereby assure that environmental harm or threats to public health have not occurred and may not occur. In addition, substantial noncompliance will be assessed in terms of the degree of deviation from any requirement of a permit or license independent of the harm or potential harm to the environment or to public health.

(3) An emergency, for purposes of this subsection, involves an unforeseen set of circumstances which calls for immediate commission action due to an actual or potential hazard to public health and safety, or severe adverse impact on or to the uses of a receiving stream, groundwater, or other water in the state. If the emergency is of sufficient gravity, the executive director shall report the emergency to the commission together with the information relating to the noncompliance and shall advise the commission of the necessity of seeking a temporary restraining order, temporary injunction, or any other remedy in equity or law necessary for the abatement of the condition or conditions causing or contributing to the emergency, if such remedy is authorized by statute.

(4) Substantial noncompliance with provisions of Texas Health and Safety Code, Chapter 382, or with rules, permits, or orders promulgated pursuant to that chapter, shall be handled pursuant to Texas Health and Safety Code, §382.082.

(b) On receiving a report under subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report to the commission has been in substantial noncompliance with his or her permit or license. Notice for this hearing shall issue in accordance with §70.104(b) and (c) of this title (relating to Notice of Executive Director's Preliminary Report), except that in the event that notice is performed under §70.104(b) of this title, by publication, the contents of that notice need only include the name of the respondent, a summary of the relief sought by the executive director, and the right of the person to a hearing if such exists.

(c) At the conclusion of the hearing, the commission shall issue an order stating one of the following:

- (1) no violation of the permit or license has occurred;
- (2) a violation of the permit or license has occurred, but has been corrected and no further action is necessary to protect the public interest;
- (3) the executive director is authorized to enter into a compliance agreement;
- (4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by the Texas Water Code or the Texas Health and Safety Code; or
- (5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee through the office of the attorney general.

Adopted May 8, 1996
Derived from §337.71

Effective June 6, 1996

Adoption of §70.51
Date Adopted: May 8, 1996
Date Filed with the Secretary of State: May 16, 1996
Date Published in the *Texas Register*: May 28, 1996
Date Effective: June 6, 1996

Derivation Table
Chapter 70 - Enforcement
Subchapter B : Mandatory Enforcement Hearings

This table is track sections during and after rule revisions. The column on the left lists the current sections prior to the revision. The column on the right lists where the section is proposed to end up in the final adoption.

New Section	Old Section
70.51	337.71